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# Injustice and high-skilled “temporary” labour migration

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### ***Abstract***

This paper aims to distinguish between the moral dilemmas posed by high- and low-skilled labour migration programs in receiving states. The first section describes the conditions that generate the demands for high- and low-skilled migrants and then observes that these distinctive demands appear to generate the distinctive conditions attached to each of these categories of programs. These conditions have led many to conclude that low-skilled, but not high-skilled, migrants appear vulnerable to abuse. However, the paper argues, the conditions that attach to high-skilled labour migration programs can also present moral dilemmas; we should not be too quick in dismissing the travails they face as temporary migrants. I argue that high-skilled migrants are subject to these injustices, including discrimination, the failure to recognize foreign credentials, and therefore, unmet expectations. The paper concludes by suggesting that the generation of two tiers of temporary labour migration – which creates an inequality among categories of migrants – is itself an injustice.

### ***Keywords***

Labour migration, high-skilled, low-skilled, injustice, discrimination.

### ***Author’s biographical note***

**Patti Tamara Lenard** is Assistant Professor of Ethics in the Graduate School of Public and International Affairs, at the University of Ottawa. She is the author of *Trust, Democracy and Multicultural Challenges* (Penn State, 2012), and her work has been published in a range of journals, including *Political Studies*, *Politics*, *Journal of Moral Philosophy*, and *Contemporary Political Theory*. She is the co-editor, with Christine Straehle, of *Health Inequalities and Global Justice* (Edinburgh University Press) as well as *Legislated Inequality: Temporary Labour Migration in Canada* (McGill-Queen’s University Press). Her current research focuses on the moral questions raised by migration across borders, as well as on multiculturalism, trust and social cohesion, and democratic theory more generally.

## Introduction<sup>1</sup>

Countries around the world are increasingly relying on temporary migrant labour to fill acute labour shortages in a timely fashion. *Temporary* migrants appear to have many virtues for receiving political communities: they can be selected for the ability and willingness to fulfill very specific labour needs, and their contract stipulations (and attendant visas) require that they return to their home countries when these needs have adequately been met. In employing temporary rather than permanent migrants, host countries do not bear the costs of integrating migrants who will become citizens, nor do they need to consider the contribution a given migrant will make to the community more generally. The *only* concern is whether a specific migrant is able and willing to fill a labour shortage.

As they have been operationalized, these programs have been the source of many well-known and well-documented problems: temporary migrants are often the victims of egregious exploitation, for example, and their rights are often violated with impunity.<sup>2</sup> Critics of these programs argue that the contractual terms to which temporary migrants are often subject are objectionable *and* that these terms serve to make these migrants particularly vulnerable to abuse. The critiques of temporary labour migrant programs often suffer from two ambiguities, however: they treat all programs, whether directed at high- or low-skilled migrants, as though they presented the same set of challenges, *or*, they suggest that moral challenges are posed *only* by low-skilled migrant programs.

This paper aims to distinguish between the moral dilemmas posed by high- and low-skilled labour migration programs in receiving states<sup>3</sup>, and then argues that the ease with which scholars dismiss the moral dilemmas posed by high-skilled migration programs is mistaken. The first section describes the conditions that generate the demands for high- and low-skilled migrants respectively, and then observes that these

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<sup>1</sup> A previous draft of this paper was presented to COMPAS at Oxford University and I am grateful to the audience there for their careful and constructive comments, from which this paper benefited a great deal. I am also grateful to the anonymous reviewer for this working paper series, and to Neus Torbisco Casals, for comments on an earlier version of the paper.

<sup>2</sup> For example, see Wickramasekara (2008).

<sup>3</sup> It is important to clarify the paper is concerned with the moral dilemmas posed by high-skilled migration programs in receiving states, since the most commonly articulated problem associated with skilled migration is brain drain, which is not among the considerations here. But see instead Oberman, (2013); Martineau, et al. (2004).

distinctive demands appear to generate the distinctive conditions attached to each of these categories of programs. These conditions have led moral theorists to conclude that low-skilled, but not high-skilled, migrants appear particularly vulnerable to abuse. For example, as Robert Mayer says of skilled migrants, for example, “admission is granted on a second-class basis, but the workers are well compensated and they cannot plausibly be described as desperate. They have good options, and so it does not seem possible that anyone could take advantage of them. They make a choice, working abroad for good money but only on a temporary basis.” (Mayer, 2005: 317) However, the paper shall suggest, the conditions that attach to high-skilled labour migration programs can also present moral dilemmas with which we should be concerned, i.e., that we should not be too quick in dismissing the travails they face as temporary migrants. In particular, it is worth considering whether high-skilled migrants are, like low-skilled migrants, subject to injustices, even if this injustice stems from distinct sources. These potential sources of injustice include: discrimination, the failure to recognize foreign credentials, and therefore, unmet expectations. The paper concludes by suggesting that the generation of two tiers of temporary labour migration – which creates an inequality among categories of migrants – is itself an injustice.

There is a partly linguistic confusion worth confronting at this early point, which I in part intended to flag in my title, where I have put the term “temporary” in reference to high-skilled workers in quotation marks. In many cases, as will become clear, high-skilled labour migration can no longer be described as temporary; in many, but not all, cases, high-skilled migrants are admitted with the implicit or explicit intention that they will remain and, in time, naturalize. I thus refer to “high-skilled labour migrants”, except in cases where this migration is explicitly designated temporary, as distinct from “low skilled temporary labour migrants”, except in the very few cases where the migration is intended to be permanent. Thus, to some extent, this paper might be described accurately as focusing on labour migration, some of which is temporary.

## **1. The global demand for temporary migrant labour**

Many western economies are described as in a kind of “demographic crisis” (Zaletel, 2006) in which aging populations and low birth rates are contributing to precarious economies that, without immigration, would be incapable of sustaining themselves. This “crisis” is often exacerbated by the past failure, sometimes purposeful and sometimes

inadvertent, of states to invest in educating their own citizens in now high-demand domains. The demand for migrants, both permanent and temporary, is thus very high across a range of nation-states, not only democratic ones, and at least in principle they are competing to attract migrants to fill positions across a range of domains. In practice, it is common to identify in particular the needs that advanced economies have that can only be filled by “high-skilled” migrants.<sup>4</sup>

Many states are struggling to find suitable candidates across a range of employment categories that are designated “high-skilled”, including “scientists, highly-skilled engineers, medical professionals, computer programmers, and information technology professionals”, and competition to recruit them appears to be fierce and increasingly global (Doomernik et al., 2009). In Europe in particular there is growing awareness that high-skilled migrants prefer where possible to migrate to the traditional immigrant receiving states (the United States, Canada, Australia, etc.), and therefore of the need to do more to recruit so-called “desirable” migrants aggressively. The benefits of bringing in highly-skilled migrants are high. In the ideal, at least, they bring with them much needed skills, and where well-selected, they possess the more general features that allow them to integrate well. The Canadian Federal Skilled Worker Program, known colloquially as the points-system, which is increasingly being emulated in other states, is intended to select migrants who not only possess skills that are needed in Canada, but who speak the language, are adequately wealthy, have education etc. – they possess a high degree of “human capital”, which will facilitate their integration more generally into Canadian society.<sup>5</sup> In general, the demand for highly-skilled migrants is high, and the perception is that these migrants – with their skills and their more general capacity to integrate – are relatively scarce, as a result of which competition to recruit them is high and increasing. Members of the European Union are in particular focusing their efforts at developing high-skilled migration programs that will prove attractive to those who might fill the labour shortages these economies are facing in domains designed “high-skilled.”

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<sup>4</sup> For an account of competition among western states to attract high-skilled migrants, see Shachar (2006). In fact, there are more than just high- and low-skilled designations; Canada, for example, also has programs that target the “semi-skilled”, which are professions that are skilled but not professional.

<sup>5</sup> Thus, readers might reasonably suggest that this program is not well-described as “temporary”, since as with most high-skilled worker programs, the intention is for the migrants to gain permanent residence and then citizenship. They are admittedly less temporary than are programs that intend that migrants return home. Yet the language enables comparison of the conditions of two categories of migration programs, in which the intention is to recruit workers for suffering economies.

The need for low-skilled workers in advanced economies is portrayed differently (see table 1 below for a summary of the distinct portrayals of high- and low-skilled workers in receiving states). A range of advanced economies are facing acute labour shortages in occupations designated “low-skilled”. Increasingly, there are jobs available – for example in agriculture and in a variety of service industries – which prove difficult to fill, even in times of high unemployment. The reasons for these difficulties are various – many employers claim that citizens are simply unwilling to carry out demanding jobs for poor remuneration, even when they have few other options, and oftentimes citizens may be unwilling or unable to relocate for low-paying jobs located outside of urban centres. It is therefore essential that employers have access to low-skilled migrants who will be willing to take these jobs.

Thus, the apparent need for workers who will fill jobs designated as low-skilled is as high as it is with respect to high-skilled workers. The discourse surrounding this demand is distinctive, however, in at least two ways. One major difference is that low-skilled workers are widely perceived to be available – there are millions of migrants in developing nations who would be happy to take up the jobs that citizens are allegedly unwilling to fill, in spite of the difficulties they are said to pose; whereas high-skilled workers are scarce, there is a glut of low-skilled workers. The only thing preventing mass migration of citizens from developing nations, so the discourse goes, is government policy that hinders labour migration (Pritchett, 2006). A second major difference is, however, that there is widespread antipathy towards the migrants who would, otherwise, be willing to hold these jobs. Although employers petition governments to make low-skilled migrants available for hire, populations more generally display anxiety with respect to the supposed dangers of admitting high numbers of low-skilled migrants. Whereas high-skilled migrants are in general described as individuals who will contribute in essential ways to advanced economies, and as individuals who possess the wherewithal to integrate effectively, low-skilled migrants – in spite of the labour market needs that propel employers to desire to have access to them – are perceived to be individuals who will ultimately harm economies, by straining welfare systems and, more generally, by failing to integrate effectively.

**Table 1: Public portrayal of high- versus low-skilled migrant labourers**

	<b>High skilled migrants</b>	<b>Low skilled migrants</b>
<b>Availability</b>	Scarce	Readily available
<b>Need</b>	Acknowledged	Denied
<b>Integration</b>	Easy	Difficult
<b>Public perception</b>	Desirable	Undesirable

## 2. Conditions of temporary labour migrant programs

As a result of the perceived differences between the availability of low- and high-skilled migrants, receiving countries believe themselves in particular to be competing for high-skilled migrants. The perception that recruiting much-needed high-skilled migrants is a competitive business, whereas no such competition characterizes the supply of low-skilled migrants, translates into differential work conditions for high- and low-skilled migrant workers.

Across most states that recruit low-skilled migrant workers, there is a relatively uniform set of conditions that attach to the visas these migrants are issued. Low-skilled migrant workers are generally bound to a specific employer; they are permitted to labour for short periods of time, without the right to transition to permanent citizenship; they are not permitted to travel with their families; and while their basic human rights are protected by law, they often do not have access to the full complement of social justice rights to which citizens are normally entitled.<sup>6</sup> While these rights restrictions do render temporary labour migrants tremendously vulnerable to abuse and, some argue, to exploitation.<sup>7</sup> These rights restrictions are directed towards ensuring that low-skilled migrants do not integrate into the larger community, and therefore that they depart when their contracts are completed. Some states are more ruthless than others in attempting to secure the departure of labour migrants upon completion of their contracts, but in all

<sup>6</sup> One claim that is frequently made is that the number of low-skilled guest workers admitted correlates directly with the rights restrictions imposed on them. On this view, rights are expensive and thus receiving states “trade” rights for migration opportunities for the low-skilled. Those who are compelled by this trade-off sometimes argue that the rights restrictions can be justified with reference to the development benefits generated by low-skilled migration, even under highly constrained conditions. For an account of the trade-off see Ruhs and Martin (2008). For a response, see Cummins and Rodriguez (2010).

<sup>7</sup> For an account of the dimensions of exploitation of temporary labour migrants, see Lenard and Straehle (2010).



cases, the objective is to prevent their staying beyond the terms indicated by their temporary work visas.<sup>8</sup>

Whereas the rights of low-skilled migrants are constrained in significant ways by the conditions that attach to their work visas, the rights of high-skilled migrants are not similarly constrained. In particular, high-skilled migrants are typically granted the rights that are, to much criticism, denied to low-skilled migrants. Whereas low-skilled migrants are not permitted to travel with their families, high-skilled migrants are. Whereas low-skilled migrants are generally not permitted the right to transition employers, high-skilled migrants are; and whereas low-skilled migrants are generally not given the opportunity to transition to permanent residence and then citizenship, high-skilled migrants are not only given this opportunity, they are encouraged to make this transition. Whereas these three rights are denied to low-skilled migrants, by states that know full well that these constraints will prevent their integration and encourage them to return home, the purpose of granting these rights to high-skilled migrants is on the contrary to encourage them to stay.<sup>9</sup> Ayelet Shachar has described the bargain between high-skilled migrants and host states as: “citizenship for talent.” (Shachar, 2010). Indeed, granting these rights to high-skilled migrants is the price states are required to pay to remain competitive in the global search for talent. Where states attempt to recruit high-skilled migrants, without granting these rights, they are less successful at doing so: the failure of the German Green Card program, which specifically targeted IT professionals from India, but which granted them the right to stay for five years only, is (sometimes) attributed to the unwillingness of the Germans to allow these migrants to stay. The migrants in question, who had better options elsewhere, in fact chose to go elsewhere.<sup>10</sup>

These distinct right sets generate two main differences in the conditions faced by low- and high-skilled migrants, first, with respect to the migratory choices they face, and therefore with respect to the extent to which they can be considered autonomous and,

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<sup>8</sup> For an account of the mechanisms by which states attempt to rid themselves of temporary labour migrants, as well as other unwanted migrants, upon completion of their contracts, see Gibney and Hansen (2003).

<sup>9</sup> Note that the claim here is not that all rights restrictions are unjustified. For an attempt to explain which of the rights restrictions are justified, see Stilz (2010).

<sup>10</sup> The explanation for the Green Card’s lack of success is contested, however. It may be that the lack of interest in moving to Germany coincided with global economic trends that depressed the demand for hiring migrants, for example. For more discussion of the contextual factors surrounding the German high-skilled labour visa see Jurgens (2010) and Kolb (2005).

second, with respect to their relative vulnerability to exploitation. That the aforementioned skilled labour migrants to Germany appear to have been able to exercise *choice*, and therefore chose against migrating to Germany, is at the centre of one of the central normative differences between high- and low-skilled labour migration programs. High-skilled migrants are able to weigh the benefits offered in a range of possible admitting states, and choose among those offered according to their own preferences. Where they don't like the conditions offered – as they allegedly did not in Germany – they can freely choose to go elsewhere, and they have many options available to them as they make these choices. To the extent that migrants can exercise autonomy in making migratory decisions, high-skilled migrants are able to exercise significant autonomy. It is the fact of competition for high-skilled migrants that creates an environment in which the most constraining of rights restrictions are (typically) not attached to their contracts, and in which they are therefore able to exercise the right to choose among high quality migratory options (Ruhs, 2013). On the other hand, low-skilled migrants are largely at the mercy of states who deign to admit them, and since there are so many of them who are willing to migrate, admitting states can impose highly restrictive conditions knowing that, even so, they will find a surplus of migrants willing to accept these conditions. Migrants may agree to take up these contracts, but doing so is not necessarily well-described as an autonomous choice; these labourers are taking these contracts because, in fact, they have no other choice than to subsist in poverty.

Of course, some deny the claim that low-skilled migrants are well-conceived as non-autonomous. The claim is not that low-skilled migrants face a range of excellent options from which to choose, but rather a more minimalist one that emphasizes the value of the consent these workers given when they accept the (non-ideal) terms of a temporary labour migration contract. The point here is that low-skilled migrants know full well what to expect in host countries, and understand that their rights will be limited; they consent to the exchange, because they believe (often rightly) that the opportunities that are presented by these contracts are nevertheless more lucrative than what they can expect to find at home. For many scholars, we must acknowledge the very real consent offered by these migrants – to do otherwise is to fail to recognize their capacity for autonomous agency<sup>11</sup> – and thus accept that though the conditions in which low-skilled migrants find themselves may not be ideal from a liberal egalitarian perspective, they

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<sup>11</sup> This is consistent with the argument made in Ottonelli and Torresi (2012).

are at least morally acceptable.<sup>12</sup> Yet, it is not clear that the willingness of these migrants to labour in low-skilled jobs away from their homes captures what is intended by the notion of consent; it may well be that they are acting, in too many cases, from desperation rather than from a sense that they have high quality options to choose from, one of which is temporary labour migration. Moreover, the fact of consent is not necessarily adequate to justify a choice – as Joseph Carens observes, there are many who would consent to working for below minimum wage in democratic states, but laws prevent their doing so, for the reason that liberal egalitarian principles protect individuals from consenting to choices that are deemed to be violations of these principles (Carens, 2008).

The second alleged normative difference between high- and low-skilled migrants also derives from the absence of these rights restrictions, namely, that because high-skilled migrants are not constrained as are low-skilled migrants, they are much less likely to be the victims of exploitation at the hands of their employers and of the admitting state. As indicated earlier, the rights restrictions and working conditions to which low-skilled temporary labour migrants are subject create an environment in which migrants are made vulnerable to exploitation; in effect, by restricting the rights to which temporary labour migrants have access, host societies force temporary labour migrants to rely on the benevolence of their employer to protect their well-being. Without a full complement of rights with which to protect themselves, temporary labour migrants lack the means by which to resist exploitative conditions. Here too, high-skilled migrants are not forced to labour in an environment in which they are made vulnerable to exploitation.

### **3. Problems of justice in high- and low-skilled migration programs**

To summarise, then, because high-skilled migrants appear to be able to choose among options available to them in admitting states, and because these options do not typically carry with them the requirement that they submit to highly constraining rights restrictions, critics of temporary labour migration programs focus their critiques on low-skilled labour migration programs. It is not the intention here to deny the very difficult conditions that low-skilled migrants are often coerced into accepting; they are well-

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<sup>12</sup> For arguments along these lines, see Bell (2001) and Mayer (2005).

documented elsewhere.<sup>13</sup> The objective here, instead, is to consider whether there are problems of justice that typically attend high-skilled labour migration programs. To that end, let me first delimit the problems of justice that apply to both high- and low-skilled migration programs, and then consider the distinctive challenges that high-skilled migrants face, and ask whether these challenges amount to *injustices* or whether they are simply harms that should be lamented, and aim to remedy, but which do not amount to the status of injustice demanding rectification.<sup>14</sup> For the purposes of the analysis that follows, harm amounts to damage to one's interests; wrong, however, refers to a failure to respect moral equality. Thus, an injustice as I understand it is committed when an individual is both harmed *and* wronged, as I have defined them.<sup>15</sup>

As noted above, low-skilled temporary labour migration programs are criticized in particular for three reasons, namely, migrants are not permitted to travel with their families, they are typically bound to one employer for the duration of their contract, and they are generally not permitted to apply for citizenship status. These conditions are, again as noted above, described as exploitation in and of themselves, or as generating the conditions under which migrants are made vulnerable to exploitation. These conditions typically do *not* apply to high-skilled labour migration programs. As a result, critics of temporary labour migrant programs often propose that only low-skilled migrants are treated unjustly.

The first thing to notice is that, while these three rights restrictions, which are common to low-skilled migration programs, are (in my view) unambiguously the source of considerable injustice, they are not themselves the only sources of injustice associated with temporary labour migration programs.<sup>16</sup> Elsewhere I have argued that the lack of access to membership is the most egregious of the injustices to which temporary labour migrants are typically subject (Lenard, 2012). Yet, whereas low-skilled temporary labour migration programs, such as Canada's Live-in Caregiver Program, provide access to membership after a certain period of time, it is evident that access to membership alone does not fully ameliorate the injustices associated with temporary labour migration programs. The Live-in Caregiver Program invites women, mainly but not exclusively from the Philippines, to labour in Canadian care-giving occupations,

<sup>13</sup> See for example the contributions to *Policy and Society*, 29/4 (2010).

<sup>14</sup> For more on this distinction, see Lazar (2009) .

<sup>15</sup> Ibid.

<sup>16</sup> See Lenard and Straehle (2012).

including in particular caring for the elderly and for children. Program requirements are wide-ranging and together have proved to be a source of injustice, in spite of the fact that the program enables successful participants to apply for permanent residence, and then citizenship, in Canada. In particular, women are required to live in the homes of their employers and they can be deported should they either lose their jobs or be unemployed for more than the shortest period of time. Together, these conditions combine to make the women who participate in them vulnerable to abuse, in particular, to sexual abuse and exploitation, in the form of longer hours and the requirement that they perform non-care giving work (Stasiulis and Bakan, 1997; Carens, 2008). Two conclusions can be drawn from an assessment of the Live-in Caregiver Program: first, that the opportunity to become a member does not necessarily translate into an abuse- or exploitation- free work experience, and second, individual program requirements often enable exploitation of workers.

What happens if we consider, then, the case of high-skilled workers in particular, the majority of whom do have access to citizenship in time? The worries expressed by and on behalf of high-skilled labour migrants are three-fold and related: they are the victims of discrimination; their credentials are not recognized and therefore they are not able work in their fields of expertise; and therefore that their expectations, on which they had based their decisions to immigrate, are not being met. It is certainly the case that these experiences are problematic – in any perfectly just state, neither citizens nor migrants would be victimized by discrimination and all credentials would be fairly recognized. What shall be considered below is whether these problematic experiences are simply harmful or whether they amount to injustice. The philosophical literature is deeply concerned with what distinguishes mere harm from injustice; here, it will do to make a simple observation about the distinction. Whereas both harms and injustices set us back in our ability to pursue our objectives, only injustices require immediate remedy. I may genuinely believe myself to be harmed when I compete for a desired employment opportunity, which is given to someone else, and that harm may indeed set back my ability to pursue my objectives, it does not deserve remedy. To be the victim of injustice, on the other hand, is to be entitled to immediate remedy, because the particular setback one has experienced is unfair in some way.

High-skilled migrants, as do all migrants as well as visible minorities more generally, observe that too often discrimination hampers their ability to be successful in a receiving state. In the case of high-skilled migrants, the specific objection is that, although admitted with priority status to fulfill acute labour shortages across a range of industries, high-skilled migrants struggle to be taken seriously as job candidates because of widespread discrimination among employers. Explicitly discriminatory hiring practices are of course illegal across democracies, so where complaints of discrimination are made, it is usually of an implicit, endemic, racism that propels a kind of unconscious discrimination among job candidates. Many contemporary states have instituted public educational campaigns intended to combat this form of discrimination: in Canada, the widespread belief that immigrants are essential to the Canadian economy is borne at least in part from effective publicity campaigns highlighting the great value that immigrants provide.

From the immigrants' perspective, while perhaps not explicitly so, this racism is institutionalized in the challenges they face in having their credentials recognized in their new homes. Having immigrated on the basis of their skills, with the specific intention of plying their trade in their new home, too many high-skilled migrants face challenges in being employed in their field of expertise, as a result of the unwillingness of employers to recognize the credentials they have gained "outside." The credentials they have amassed, which have satisfied immigration officials' requirements, turn out to be insufficient to satisfy the demands of employers. As a result, high-skilled migrants are often forced to labour in employment for which they are over-qualified or in unrelated fields entirely.<sup>17</sup> This dilemma does not go unrecognized by governments – in Canada, the federal government has tried and failed to encourage provinces, who are mainly charged with designating required credentials across a range of fields in which high-skilled migrants seek employment, to unify and make clear the required credentials in these fields, and to make simple the process by which foreign credentials are recognized.

In order to assess whether discrimination itself, and the failure of foreign credentials to be recognized adequately, are harms that amount to injustices, we need to assess the third dimension of the challenge that high-skilled migrants face: unmet expectations.

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<sup>17</sup> For example, see Syed (2008).

Legitimate expectations, as John Rawls has defined them, are specified by the “public rules that specify the scheme of cooperation.” He continues, “apart from existing institutions, there is no prior and independent idea of what we may legitimately expect.” (Rawls, 2001). For Rawls, our expectations are normally structured in relation to the institutions that govern our lives, which they do in keeping with a shared conception of political justice.

In this context, therefore, there are three distinct questions to ask: 1) Do these expectations apply to those who are resident non-citizens, *on the path* towards citizenship? 2) If so, are their *legitimate* expectations unmet? 3) Do they have real reason to expect that they be treated as equals rather than in the discriminatory fashion that so many of them experience? In response to the first question, it seems clear that these expectations do apply to high-skilled migrants, i.e., that given the status of high-skilled migrants as proto-citizens, their expectations are set by the environment they intend to join permanently, and therefore that where their *legitimate* expectations go unmet, an injustice is done to them.

The second and third questions must equally be answered in the affirmative. High-skilled migrants apply, in a competitive environment, to migrate, and they have options among which to choose. If high-skilled migrants are wooed with the promise of adequate employment in the admitting state, and if they arrive only to find that this employment is not available to them as a result of implicit discrimination, institutionalized in foreign credential recognizing regimes that are difficult to access, these migrants’ expectations – their legitimate expectations – are unmet. In advertising to attract high-skilled migrants, with the promise of appropriate-to-their-skills employment, the government can be said to be providing inadequate information to prospective applications. They fall victim to false information on which they base their choice. Thus, where they choose among falsely advertised options, their legitimate expectations go unmet, and a veritable injustice is done to them.

To clarify the role that expectations play, here, let us compare the case of a doctoral candidate in political theory in a western democratic state and the case of a high-skilled migrant joining that same state. The doctoral student may certainly hope to work in an academic institution upon graduation, but (assuming she was adequately mentored along the way) will know that these positions are scarce and that she will likely be



forced into alternative employment. Is she treated unjustly? No one would claim that she has been treated unjustly – the mere fact that she is working towards a set of credentials is inadequate to justify her *expecting* that she be provided with a job that is commensurate with her education. The case of the high-skilled migrant is distinct, however, since in this case she is recruited and admitted with the belief that her skills or education are in demand, and that she can *expect* to find employment where these are respected and remunerated fairly. The difference stems from the access to information that each of these individuals has about the job market – in the case of the doctoral candidate, she has access to high quality information describing the job market she is facing, whereas in the case of the high-skilled migrant, she is provided with false information about the job market she is facing.

#### **4. Two tiers of migrants and the danger of eroding public support for immigration**

There is an additional consideration that can come along with the admission of migrants along two distinct skill-tracks and which carry distinct rights restrictions. There may well be harms associated with the admission of two tiers of migrants together, one set that is admitted to permanent residence and citizenship, the other that is admitted to fill certain essential jobs, and then to be encouraged or required to exit. Aside from the moral difficulties posed by requiring individuals, whose contributions are essential to the economy to leave where they prefer to stay,<sup>18</sup> there are two additional difficulties posed by admitting two tiers in tandem.

One difficulty stems from the inequality between immigrants. Democracies are founded upon the principle that all citizens are equal, and to the extent that no relevant differences distinguish citizens, they must be treated equally by the law. The willingness to treat labour migrants differently – in virtue of a belief that certain migrants may prove, in the long term, to be drains on an economy, where they are admitted specifically to fill acute labour shortages in the first place, whereas others will prove only to be a boon to the Canadian economy – is a violation of the essential democratic principle commitment to equal treatment. Some might respond here to claim that, in fact, the commitment to equality extends only to citizens. But there is no good

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<sup>18</sup> In fact whether low-skilled migrants prefer to stay is the subject of at least some dispute. In my view, the fact that states work so hard to prevent these migrants from remaining is evidence, at least, that they believe these migrants prefer to stay. But for a view that argues that labour migrants possess “temporary migratory projects”, which should be respected, see Ottonelli and Torresi (2012)



moral reason to deny equality to those who are admitted to fill labour shortages, since they are quite clearly essential and contributing members of the political community.

A second difficulty stems from the predictable long-term effects of admitting two tiers of migrants, in particular where the balance of admissions is in admitting low-skilled migrants (and even where the balance tips in favour of high-skilled migrants, but where the balance is shifting over time to increase the number of low-skilled migrants, either as a proportion of those admitted, or in real numbers). Immigration finds its highest levels of support in political communities where citizens believe that immigrants are net contributors to the economy, and therefore are perceived to be essential members of the community. Yet, where migrants are admitted on a temporary basis only, and where they therefore fail to integrate effectively (because provided with none of the support that integration requires), the danger is that the perception that *all* immigrants struggle to integrate will emerge, and will drive down public support for immigration more generally, and will moreover produce and exacerbate the discrimination that makes migrants feel unwelcome and discouraged. In other words, the risk of admitting two tracks of migrants is that we will generate conditions that are unwelcoming for *all* migrants regardless of the track on which they are admitted. The result will be the creation of a society in which immigrants themselves are not fully included as members of the larger political and social community.

## **5. Conclusion**

The purpose of this paper has not been to argue that high-skilled migrants are victims of injustice in ways that are more significant than those experienced by low-skilled migrants. Rather, the purpose of this paper is to highlight that high-skilled migrants are themselves victims of injustice, and moreover that there are long-term dilemmas associated with the aggressive recruitment of two tiers of migrants.

The paper began by exploring the context that calls for hiring both high- and low-skilled temporary labour migrants. It then observed that the apparent oversupply of low-skilled migrants appears to justify treating them poorly, i.e., restricting their rights, whereas the undersupply of high-skilled migrants appears to drive a global competition to provide attractive conditions to them in exchange for their willingness to migrate. The relatively

distinctive conditions that welcome high- and low-skilled temporary labour migrants generate injustices for both categories of migrants.

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